TRANSMITTAL LETTER (General - Patent Pending)	Docket No. 3829.03-1

In Re Application Of: WILLIAM J. WECHTER, ET AL.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/763,111	01/21/2004	ZHANG, NANCY L.	23308	1614	5923

Title: FAT SUBSTITUTES

COMMISSIONER FOR PATENTS:

Transmitted herewith is:

1. TRANSMITTAL LETTER;
2. RESPONSE TO RESTRICTION REQUIREMENT; AND
3. POSTCARD.

in the above identified application.

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Dated: AUGUST 30, 2006

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PATENTS
Attorney Docket No. 3829.03-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
William J. Wechter, *et al.*

Serial No.: 10/763,111 Group Art Unit: 1614

Confirmation No.: 5923 Examiner: Nancy L. Zhang

Filed: January 21, 2004

Title: Fat Substitutes

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Response to Restriction Requirement

This paper is responsive to the Restriction Requirement in the Office Action dated August 3, 2006, from the U.S. Patent and Trademark Office in the above-identified patent application.

Restriction Requirement

Restriction was required under 35 U.S.C. §121 as follows:

Group I – Claims 25-48, drawn to products comprising a compound of the formula A-(metabolic blocker)-COOH, classified in class 424, subclass 439.

Group II – Claims 1-24, drawn to methods of using the product comprising a compound of the formula A-(metabolic blocker)-COOH, classified in class 424, subclass 439.

In making the Restriction Requirement, a determination was made that the inventions of Groups I and II are distinct each from the other. According to M.P.E.P. 802.01 the term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (emphasis in original). Accordingly, in making the restriction requirement the Office Action is acknowledging at least implicitly that the inventions of the aforementioned groups are separately patentable over one other. If this were not the case, then the restriction requirement would not be proper. Furthermore, it follows from the above that art (if such art exists) indicating that the invention of one of the groups is known or would have been obvious would not extend to a holding that the inventions of the other groups are known or would have been obvious.

In response to and as required by the Restriction Requirement, Applicant elects the invention of Group II, Claims 1-24. Applicant reserves the right to file divisional patent applications to the subject matter that the Office Action has determined to be patentably distinct and separately patentable.

Election of Species

The Office Action asserts that the invention in Group II contains claims directed to several patentably distinct species (II-a – II-f). The Office Action required Applicant to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The Office Action further indicated that currently all claims are generic.

In response thereto, Applicant elects the species II-c, which is of the formula above where the metabolic blocker is –C(X)(D)-. The Office Action indicates that, if this species is elected, Applicant is required to specify a specific A, X, and D and to indicate all claims readable on the elected species.

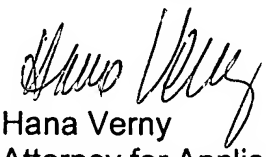
In response, Applicant elects the species wherein A is alkyl of 18 carbons, X is methyl and D is hydrogen. The claims from Group II readable thereon are claims 1, 2, 5-7, 11 and 14-17.

It has been held that a requirement for election of species is tantamount to a restriction requirement. Accordingly, Applicant reserves the right to file divisional patent applications to the species that the Office Action has determined are patentable over one another. See also M.P.E.P. 806.04(h). With respect to the election of species, the requirement for the election indicated that the species were patentably distinct and, thus, the various species, by definition, have been determined to be patentable over each other.

Applicant further acknowledges the indication in the Office Action that upon allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species that are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. 1.141.

Dated: August 30, 2006

Respectfully submitted,



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